

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Letters Patent Appeal No. 178/2007

(Arising out of writ petition no. 3611/2006)

Yadaorao Ganpatao Hake vs. The Collector, Having its office at Yavatmal and others.

Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's
Orders.

CORAM : A.P. Lavande & R.V. More,, JJ
RESERVED ON : 27.9.2007
DATE OF PRONOUNCEMENT : 12.12.2007

Heard Mr. Phadnis, learned counsel for the appellant and Mrs. Joshi, learned A.G.P. for respondents.

2. This letters patent appeal has been directed against the order dated 8th March, 2007 passed by the learned Single Judge in W.P.No. 3611/2006 preferred by the appellant against the Judgment and order dated 26.4.2004 passed by the 3rd Ad hoc Additional District Judge, Pusad in Land Acquisition Case No. 42/2004 holding that the reference sought by the appellant was barred by limitation.

3. By notification dated 14.9.1978 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "The Act") the land belonging to the appellant was acquired by the State of Maharashtra for public purpose and the award was made by the Land Acquisition Officer on

21.12.1980. The Land Acquisition Officer fixed compensation at Rs. 91,260/- in respect of the land belonging to the appellant herein.. The appellant and two others claimed the said compensation and as such Land Acquisition Officer made reference under Section 30 of the Act. The Reference under Section 30 of the Act was disposed of by the Reference Court on 5.7.2003 holding that the petitioner was entitled to entire compensation. Thereafter, the petitioner collected the said amount and claimed enhanced compensation by filing application on 14.8.2003. The Reference Court framed several issues including issue as to whether reference was within limitation. The Reference Court decided the issue against the appellant holding that the reference was hopelessly barred under Section 18 of the Act and consequently rejected the reference. As stated above the writ petition filed by the appellant has been dismissed by the learned Single Judge which have been challenged by filing the present letters patent appeal.

3. Mr. Phadnis, learned counsel appearing for the appellant submitted that the impugned Judgment and order is liable to be set aside inasmuch as the reference was well within the time since cause of action for seeking enhanced compensation arose only after the Judgment was passed by the District Court holding that the petitioner was entitled to

receive the entire compensation. He further submitted that since the right of the appellant in respect of the acquired land was not adjudicated till Judgment dated 5.7.2003 was passed the appellant was entitled to seek reference only after the period prescribed under Section 18 of the Act.

4. In support of his submissions, Mr. Phadnis relied upon the following Judgments.

i) Dr. G.H.Grant vs. The State of Bihar
(AIR 1966 Supreme Court 237)

ii) Sharda Devi vs. State of Bihar and another.
(2003) 3 Supreme Court Cases 128.

5. Per contra, Mrs. Joshi, learned A.G.P. supported the impugned order. Mrs. Joshi submitted that in terms of Section 18 of the Act, the reference ought to have been made within a period of 6 weeks since the appellant was present at the time of making award. She further submitted that in any case the reference sought after the period of almost 13 years is hopelessly barred by limitation and as such no interference is called for in the appeal.

6. We have considered the submissions made by the

learned counsel for the parties and perused the Judgments relied upon. In the present case admittedly the award was passed on 22.8.1980 and appellant participated in the proceedings before the Land Acquisition Officer and he was present at the time of making of award. A bare reading of Section 18 of the Act makes it clear that in case if the person is present at the time of passing of the award the reference ought to be made within six weeks from the date of the award. It is also well settled that the Collector has no power to condone the delay in making reference under Section 18 of th Act. This being the position, in our opinion, the appellant ought to have filed application seeking reference within a period of six weeks from the date of the award. Mere fact that the reference under Section 30 was made in respect of the acquired land would not extend the period for making reference under Section 18 of The Act at the instance of a person interested in the land. Notwithstanding the reference under Section 30 of the Act the appellant could have also sought reference under Section 18 of the Act. The appellant having chosen not to

seek reference within the time, cannot now contend that he is entitled to seek reference after reference under Section 30 is decided.

7. We find that the Judgments relied upon by the appellant do not advance the case of the appellant since the issues involved in both the Judgments are not different and not similar to the one in the present case.

8. For the reasons aforesaid we are of the considered opinion that the learned Single Judge was right in dismissing the writ petition. Consequently, the appeal is rejected.

Judge

Judge

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